

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>In Re:</b>  <b>W.R. GRACE &amp; CO., et al.,</b>  <b>Debtors.</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (JKF)</b>
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**FEE AUDITOR'S FINAL REPORT REGARDING  
FEE APPLICATION OF CARELLA, BYRNE,  
BAIN, GILFILLAN, CECCHI, STEWART & OLSTEIN  
FOR THE SIXTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C. ("Smith"), acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Interim Fee Application of Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein for the Sixth Interim Period.

**BACKGROUND**

1. Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein ("CBBG") was retained as Special Litigation and Environmental Counsel to Debtors. In the Application, CBBG seeks approval of fees totaling **\$106,768.00** and costs totaling **\$5,833.93** for its services from **July 1, 2002, through September 30, 2002**.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications

for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330, Issued January 30, 1996, (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served on CBBG an initial report based on our review, and received a response from CBBG, portions of which response are quoted herein.

## **DISCUSSION**

### General Issues

3. In our initial report, we noted that timekeeper MEF often did not include sufficient detail in her time entries. Rule 2016-2(d) of the Delaware Local Rules states “activity descriptions . . . shall be sufficiently detailed to allow the Court to determine whether all the time, or any portion thereof, is actual, reasonable, and necessary . . .” This issue has been raised in previous reports and we have advised certain professionals to provide more detailed time entries in the future. We again asked that CBBG continue to advise its professionals regarding this matter. CBBG responded that it would do so.

4. In our initial report, we noted that JMA and MEF consistently lumped their time entries. Local Rule 2016-2(d)(vii) provides that “[a]ctivity descriptions shall not be lumped – each activity shall have a separate description and a time allotment.” We asked that CBBG advise these professionals to avoid lumping their time entries in the future. CBBG responded that it would do so.

5. In our initial report, we noted that between July 2, 2002, and September 27, 2002, JMA (\$325) and MEF (\$215) spent a combined total of 197.60 hours and \$53,870.00 to prepare for and participate in meetings and telephone calls involving more than one professional. Local Rule

2016-2(d)(ix) provides “[t]he activity descriptions shall individually identify all meetings and hearings, each participant, the subject(s) of the meeting or hearing, and the participant’s role.” Also, Paragraph II.D.5., of the Guidelines, states “. . . [i]f more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.” We further noted that CBBG has addressed and adequately answered these concerns in paragraphs nine through 17 of the Application. We appreciate and accept CBBG’s explanations of the need for more than one professional to participate in the meetings and telephone conferences detailed in the Application.

#### Specific Time and Expense Entries

6. In our initial report, we noted that in the monthly invoice for September in the project category “Travel Non-Work”, time entries for MEF (\$215) and JMA (\$325) reflect a total of 8.5 hours and \$2,366.50. This time appears to have been billed at each professional’s full hourly rate. The entries are provided below.

09/24/02	MEF	1.60	344.00	Travel - (non-work) To Washington, D.C.
09/25/02	JMA	2.40	780.00	Travel - non-work - New Jersey to Washington, DC, for meeting with C. Marraro
09/26/02	MEF	2.00	430.00	Travel to NJ (non-work)
09/26/02	JMA	2.50	812.50	Travel - non-work - Washington, DC to New Jersey return from meeting

Local Rule 2016-2(d)(viii) provides that “[t]ravel time during which no work is performed shall be separately described and may be billed at no more than 50% of regular hourly rates.” We asked CBBG to explain why this travel time was billed at full hourly rates. CBBG responded as follows:

JMA and MEF were billed at their respective full hourly rates because the

software program which CBBG's billing system uses automatically bills each attorney at his/her full hourly rate. CBBG has reviewed Local Rule 2016-2(d)(viii) which limits compensation for travel non-work to 50% of the professional's billing rate. In the future, CBBG will ensure that travel non-work time is billed at 50%. CBBG agrees that its fees for the month of September 2002 should be reduced by \$1,183.25. This adjustment will result in travel time for MEF (\$215) and JMA (\$325) being reduced 50% of their billing rate in accordance with Local Rule 2016-2(d)(viii).

We accept CBBG's response and thus recommend a reduction of \$1,183.25 in fees.

7. In our initial report, we further noted the same issue on August 22 and 23, 2002. Time entries for MEF (\$215) and JMA (\$325) indicate that travel time was again billed at full hourly rates. Because of lumping, it is impossible to determine how much travel time is contained in the fee detail. However, the "Compensation by Project Category" summary shows 12.80 hours and \$3,412.00 in the project category "Travel - non-working." This would also indicate that the travel time was billed at full hourly rates. The total time for the listed entries is 53.80 hours for \$14,427.00. They are shown below.

08/22/02	JMA	13.00	4225.00	Travel to Washington, DC; attend conference with C. Marraro, B. Hughes and MEF re: preparation of stipulations of fact and trial exhibits for final pretrial order; trial strategy; phone - plaintiffs' counsel
08/22/02	MEF	13.80	2967.00	Travel to and attend meeting in Washington D.C. with JMA, C. Marraro and W. Hughes regarding Final Pretrial Stipulations
08/23/02	JMA	13.00	4225	Attend conference with C. Marraro, B. Hughes and MEF re: preparation of trial exhibit list and stipulations of fact; trial strategy; travel to New Jersey
08/23/02	MEF	14.00	3010.00	Meeting with JMA, C. Marraro and W. Hughes regarding final pretrial order stipulations and exhibits; travel to NJ

Local Rule 2016-2(d)(viii) provides that "[t]ravel time during which no work is performed shall be

separately described and may be billed at no more than 50% of regular hourly rates.” We again asked CBBG to explain why this travel time was billed at full hourly rates. CBBG responded as follows:

The lumping together of time with respect to travel on August 22 and 23, 2002 and work performed on those dates was inadvertent. Attorney notes reflect the actual amount of time spent on travel and in participating in the meetings that were conducted on August 22 and 23, 2002. CBBG was able to ascertain the amount of time for travel non-work” for inclusion in the Project Category based upon the attorney notes. In September 2002, CBBG was advised of the revised project category designations which professionals are required to submit with their fee application. Lumping of time will be avoided in the future.

JMA and MEF were billed at their respective full hourly rates because the software program which CBBG’s billing system uses automatically bills each attorney at his/her full hourly rate. CBBG has reviewed Local Rule 2016-2(d)(viii) which limits compensation for travel non-work to 50% of the professional’s billing rate. In the future, CBBG will ensure that travel non-work time is billed at 50%. CBBG agrees that its fees for the month of August 2002 should be reduced by \$1,706.00. This adjustment will result in travel time for MEF (\$215) and JMA (\$325) being reduced 50% of their billing rate in accordance with Local Rate 2016-2(d)(viii).

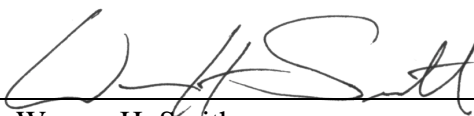
We accept CBBG’s explanation and thus recommend a reduction in fees of \$1,706.00.

### **CONCLUSION**

8. Thus, we recommend approval of fees totaling \$103,878.75 (\$106,768.00 minus \$2,889.25) and costs totaling \$5,833.93 for CBBG’s services from July 1, 2002, through September 30, 2002.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

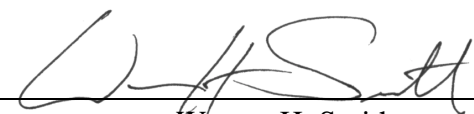
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**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 4<sup>th</sup> day of February 2003.

  
Warren H. Smith

## **SERVICE LIST**

### **Notice Parties**

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